

AMENDMENT NO.

Calendar No.

Purpose: To provide a complete substitute.

IN THE SENATE OF THE UNITED STATES—110th Cong., 2d Sess.**H. R. 3773**

To amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. ROCKEFELLER

Viz:

1 In lieu of the matter proposed to be inserted by the
2 amendment of the House of Representatives to the amend-
3 ment of the Senate to the text of the bill, insert the fol-
4 lowing:

5 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

6 (a) **SHORT TITLE.**—This Act may be cited as the
7 “Foreign Intelligence Surveillance Act of 1978 Amend-
8 ments Act of 2008” or the “FISA Amendments Act of
9 2008”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

- Sec. 101. Additional procedures regarding certain persons outside the United States.
- Sec. 102. Statement of exclusive means by which electronic surveillance and interception of certain communications may be conducted.
- Sec. 103. Submittal to Congress of certain court orders under the Foreign Intelligence Surveillance Act of 1978.
- Sec. 104. Applications for court orders.
- Sec. 105. Issuance of an order.
- Sec. 106. Use of information.
- Sec. 107. Amendments for physical searches.
- Sec. 108. Amendments for emergency pen registers and trap and trace devices.
- Sec. 109. Foreign Intelligence Surveillance Court.
- Sec. 110. Review of previous actions.
- Sec. 111. Weapons of mass destruction.

TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

- Sec. 201. Procedures for implementing statutory defenses under the Foreign Intelligence Surveillance Act of 1978.
- Sec. 202. Technical amendments.

TITLE III—COMMISSION ON INTELLIGENCE COLLECTION, PRIVACY PROTECTION, AND CHANGES IN INFORMATION TECHNOLOGY

- Sec. 301. Commission on Intelligence Collection, Privacy Protection, and Changes in Information Technology.

TITLE IV—OTHER PROVISIONS

- Sec. 401. Severability.
- Sec. 402. Effective date.
- Sec. 403. Repeals.
- Sec. 404. Transition procedures.

3 **TITLE I—FOREIGN**
4 **INTELLIGENCE SURVEILLANCE**
5 **SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN**
6 **PERSONS OUTSIDE THE UNITED STATES.**

7 (a) IN GENERAL.—The Foreign Intelligence Surveil-
8 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

1 (1) by striking title VII; and

2 (2) by adding after title VI the following new
3 title:

4 **“TITLE VII—ADDITIONAL PROCE-**
5 **DURES REGARDING CERTAIN**
6 **PERSONS OUTSIDE THE**
7 **UNITED STATES**

8 **“SEC. 701. DEFINITIONS.**

9 “(a) IN GENERAL.—The terms ‘agent of a foreign
10 power’, ‘Attorney General’, ‘contents’, ‘electronic surveil-
11 lance’, ‘foreign intelligence information’, ‘foreign power’,
12 ‘person’, ‘United States’, and ‘United States person’ have
13 the meanings given such terms in section 101, except as
14 specifically provided in this title.

15 “(b) ADDITIONAL DEFINITIONS.—

16 “(1) CONGRESSIONAL INTELLIGENCE COMMIT-
17 TEES.—The term ‘congressional intelligence commit-
18 tees’ means—

19 “(A) the Select Committee on Intelligence
20 of the Senate; and

21 “(B) the Permanent Select Committee on
22 Intelligence of the House of Representatives.

23 “(2) FOREIGN INTELLIGENCE SURVEILLANCE
24 COURT; COURT.—The terms ‘Foreign Intelligence

1 Surveillance Court' and 'Court' mean the court es-
2 tablished by section 103(a).

3 "(3) FOREIGN INTELLIGENCE SURVEILLANCE
4 COURT OF REVIEW; COURT OF REVIEW.—The terms
5 'Foreign Intelligence Surveillance Court of Review'
6 and 'Court of Review' mean the court established by
7 section 103(b).

8 "(4) ELECTRONIC COMMUNICATION SERVICE
9 PROVIDER.—The term 'electronic communication
10 service provider' means—

11 "(A) a telecommunications carrier, as that
12 term is defined in section 3 of the Communica-
13 tions Act of 1934 (47 U.S.C. 153);

14 "(B) a provider of electronic communica-
15 tion service, as that term is defined in section
16 2510 of title 18, United States Code;

17 "(C) a provider of a remote computing
18 service, as that term is defined in section 2711
19 of title 18, United States Code;

20 "(D) any other communication service pro-
21 vider who has access to wire or electronic com-
22 munications either as such communications are
23 transmitted or as such communications are
24 stored; or

1 “(E) an officer, employee, or agent of an
2 entity described in subparagraph (A), (B), (C),
3 or (D).

4 “(5) INTELLIGENCE COMMUNITY.—The term
5 ‘intelligence community’ has the meaning given the
6 term in section 3(4) of the National Security Act of
7 1947 (50 U.S.C. 401a(4)).

8 **“SEC. 702. PROCEDURES FOR TARGETING CERTAIN PER-**
9 **SONS OUTSIDE THE UNITED STATES OTHER**
10 **THAN UNITED STATES PERSONS.**

11 “(a) AUTHORIZATION.—Notwithstanding any other
12 provision of law, pursuant to an order issued in accord-
13 ance with subsection (i)(3) or a determination under sub-
14 section (g)(1)(B)(ii), the Attorney General and the Direc-
15 tor of National Intelligence may authorize jointly, for a
16 period of up to 1 year from the effective date of the au-
17 thorization, the targeting of persons reasonably believed
18 to be located outside the United States to acquire foreign
19 intelligence information.

20 “(b) LIMITATIONS.—An acquisition authorized under
21 subsection (a)—

22 “(1) may not intentionally target any person
23 known at the time of acquisition to be located in the
24 United States;

1 “(2) may not intentionally target a person rea-
2 sonably believed to be located outside the United
3 States if the purpose of such acquisition is in order
4 to target a particular, known person reasonably be-
5 lieved to be in the United States;

6 “(3) may not intentionally target a United
7 States person reasonably believed to be located out-
8 side the United States;

9 “(4) may not intentionally acquire any commu-
10 nication as to which the sender and all intended re-
11 cipients are known at the time of the acquisition to
12 be located in the United States; and

13 “(5) shall be conducted in a manner consistent
14 with the fourth amendment to the Constitution of
15 the United States.

16 “(c) CONDUCT OF ACQUISITION.—

17 “(1) IN GENERAL.—An acquisition authorized
18 under subsection (a) may be conducted only in ac-
19 cordance with—

20 “(A) the certification made by the Attor-
21 ney General and the Director of National Intel-
22 ligence submitted in accordance with subsection
23 (g); and

1 “(B) the targeting and minimization proce-
2 dures submitted in accordance with subsections
3 (d) and (e).

4 “(2) CONSTRUCTION.—Nothing in title I of this
5 Act shall be construed to require an application
6 under section 104 for an acquisition that is targeted
7 in accordance with this section at a person reason-
8 ably believed to be located outside the United States.

9 “(d) TARGETING PROCEDURES.—

10 “(1) REQUIREMENT TO ADOPT.—The Attorney
11 General, in consultation with the Director of Na-
12 tional Intelligence, shall adopt targeting procedures
13 that are reasonably designed to ensure that any ac-
14 quisition authorized under subsection (a) is limited
15 to targeting persons reasonably believed to be lo-
16 cated outside the United States and does not result
17 in the intentional acquisition of any communication
18 as to which the sender and all intended recipients
19 are known at the time of the acquisition to be lo-
20 cated in the United States.

21 “(2) JUDICIAL REVIEW.—The procedures re-
22 quired by paragraph (1) shall be subject to judicial
23 review pursuant to subsection (i).

24 “(e) MINIMIZATION PROCEDURES.—

1 “(1) REQUIREMENT TO ADOPT.—The Attorney
2 General, in consultation with the Director of Na-
3 tional Intelligence, shall adopt minimization proce-
4 dures that meet the definition of minimization proce-
5 dures under section 101(h) or section 301(4), as ap-
6 propriate, for acquisitions authorized under sub-
7 section (a).

8 “(2) JUDICIAL REVIEW.—The minimization
9 procedures required by paragraph (1) shall be sub-
10 ject to judicial review pursuant to subsection (i).

11 “(f) GUIDELINES FOR COMPLIANCE WITH LIMITA-
12 TIONS.—

13 “(1) REQUIREMENT TO ADOPT.—The Attorney
14 General, in consultation with the Director of Na-
15 tional Intelligence, shall adopt guidelines to ensure—

16 “(A) compliance with the limitations in
17 subsection (b); and

18 “(B) that an application is filed under sec-
19 tion 104 or section 303, as appropriate, if re-
20 quired by any other section of this Act.

21 “(2) TRAINING.—The Director of National In-
22 telligence shall establish a training program for ap-
23 propriate intelligence community personnel to ensure
24 that the guidelines adopted pursuant to paragraph
25 (1) are properly implemented.

1 “(3) SUBMISSION OF GUIDELINES.—The Attor-
2 ney General shall provide the guidelines adopted
3 pursuant to paragraph (1) to—

4 “(A) the congressional intelligence commit-
5 tees;

6 “(B) the Committee on the Judiciary of
7 the Senate;

8 “(C) the Committee on the Judiciary of
9 the House of Representatives; and

10 “(D) the Foreign Intelligence Surveillance
11 Court.

12 “(g) CERTIFICATION.—

13 “(1) IN GENERAL.—

14 “(A) REQUIREMENT.—In order to conduct
15 an acquisition under subsection (a), the Attor-
16 ney General and the Director of National Intel-
17 ligence shall provide to the Foreign Intelligence
18 Surveillance Court, under oath, a written cer-
19 tification and any supporting affidavit, under
20 seal, in accordance with this subsection.

21 “(B) TIMING OF SUBMISSION TO THE
22 COURT.—

23 “(i) IN GENERAL.—Except as pro-
24 vided in clause (ii), the Attorney General
25 and Director of National Intelligence shall

1 provide a copy of a certification made
2 under this subsection to the Foreign Intel-
3 ligence Surveillance Court prior to the ini-
4 tiation of an acquisition under subsection
5 (a).

6 “(ii) EXCEPTION.—If the Attorney
7 General and the Director of National Intel-
8 ligence determine that there should be im-
9 mediate implementation of the authoriza-
10 tion and time does not permit the issuance
11 of an order pursuant to subsection (i)(3)
12 prior to the implementation of the author-
13 ization, the Attorney General and the Di-
14 rector of National Intelligence may author-
15 ize the acquisition and shall submit to the
16 Foreign Intelligence Surveillance Court a
17 certification, including the determination
18 under this subsection, as soon as possible
19 but in no event more than 7 days after
20 such determination is made.

21 “(2) REQUIREMENTS.—A certification made
22 under this subsection shall—

23 “(A) attest that—

24 “(i) there are reasonable procedures
25 in place that have been approved or sub-

1 mitted for approval to the Foreign Intel-
2 ligence Surveillance Court, for determining
3 that the acquisition authorized under sub-
4 section (a)—

5 “(I) is targeted at persons rea-
6 sonably believed to be located outside
7 the United States; and

8 “(II) does not result in the inten-
9 tional acquisition of any communica-
10 tion as to which the sender and all in-
11 tended recipients are known at the
12 time of the acquisition to be located in
13 the United States;

14 “(ii) guidelines have been adopted in
15 accordance with subsection (f) to ensure
16 compliance with the limitations in sub-
17 section (b) and to ensure that applications
18 are filed under section 104 or section 303,
19 if required by this Act;

20 “(iii) the minimization procedures to
21 be used with respect to such acquisition—

22 “(I) meet the definition of mini-
23 mization procedures under section
24 101(h) or section 301(4), as appro-
25 priate; and

1 “(II) have been approved by, or
2 submitted for approval by, the For-
3 eign Intelligence Surveillance Court;

4 “(iv) the procedures and guidelines re-
5 ferred to in clauses (i), (ii), and (iii) are
6 consistent with the requirements of the
7 fourth amendment to the Constitution of
8 the United States;

9 “(v) a significant purpose of the ac-
10 quisition is to obtain foreign intelligence
11 information;

12 “(vi) the acquisition involves obtaining
13 the foreign intelligence information from or
14 with the assistance of an electronic com-
15 munication service provider; and

16 “(vii) the acquisition complies with
17 the limitations in subsection (b); and

18 “(B) be supported, as appropriate, by the
19 affidavit of any appropriate official in the area
20 of national security who is—

21 “(i) appointed by the President, by
22 and with the consent of the Senate; or

23 “(ii) the head of an element of the in-
24 telligence community; and

25 “(C) include—

1 “(i) an effective date for the author-
2 ization that is between 30 and 60 days
3 from the submission of the written certifi-
4 cation to the court; or

5 “(ii) if the acquisition has begun or
6 the effective date is less than 30 days from
7 the submission of the written certification
8 to the court—

9 “(I) the date the acquisition
10 began or the effective date for the ac-
11 quisition;

12 “(II) a description of why initi-
13 ation of the acquisition is required in
14 less than 30 days from the submission
15 of the written certification to the
16 court; and

17 “(III) if the acquisition is au-
18 thorized under paragraph (1)(B)(ii), a
19 description of why there should be im-
20 mediate implementation of the author-
21 ization and time does not permit the
22 issuance of an order pursuant to sub-
23 section (i)(3) prior to the implementa-
24 tion of the authorization.

1 “(3) CHANGE IN EFFECTIVE DATE.—The At-
2 torney General and the Director of National Intel-
3 ligence may advance or delay the effective date de-
4 scribed in paragraph (2)(C) by amending the certifi-
5 cation pursuant to subsection (i)(C) to include the
6 applicable requirements of paragraph (2)(C).

7 “(4) LIMITATION.—A certification made under
8 this subsection is not required to identify the specific
9 facilities, places, premises, or property at which the
10 acquisition authorized under subsection (a) will be
11 directed or conducted.

12 “(5) MAINTENANCE OF CERTIFICATION.—The
13 Attorney General shall maintain a copy of a certifi-
14 cation made under this subsection under security
15 measures adopted by the Chief Justice of the United
16 States and the Attorney General, in consultation
17 with the Director of National Intelligence.

18 “(6) REVIEW.—The certification required by
19 this subsection shall be subject to judicial review
20 pursuant to subsection (i).

21 “(h) DIRECTIVES AND JUDICIAL REVIEW OF DIREC-
22 TIVES.—

23 “(1) AUTHORITY.—With respect to an acquisi-
24 tion authorized under subsection (a), the Attorney
25 General and the Director of National Intelligence

1 may direct, in writing, an electronic communication
2 service provider to—

3 “(A) immediately provide the Government
4 with all information, facilities, or assistance
5 necessary to accomplish the acquisition author-
6 ized in accordance with this section in a manner
7 that will protect the secrecy of the acquisition
8 and produce a minimum of interference with
9 the services that such electronic communication
10 service provider is providing to the target of the
11 acquisition; and

12 “(B) maintain under security procedures
13 approved by the Attorney General and the Di-
14 rector of National Intelligence any records con-
15 cerning the acquisition or the aid furnished that
16 such electronic communication service provider
17 wishes to maintain.

18 “(2) COMPENSATION.—The Government shall
19 compensate, at the prevailing rate, an electronic
20 communication service provider for providing infor-
21 mation, facilities, or assistance pursuant to para-
22 graph (1).

23 “(3) RELEASE FROM LIABILITY.—No cause of
24 action shall lie in any court against any electronic
25 communication service provider for providing any in-

1 formation, facilities, or assistance in accordance with
2 a directive issued pursuant to paragraph (1).

3 “(4) CHALLENGING OF DIRECTIVES.—

4 “(A) AUTHORITY TO CHALLENGE.—An
5 electronic communication service provider re-
6 ceiving a directive issued pursuant to paragraph
7 (1) may challenge the directive by filing a peti-
8 tion with the Foreign Intelligence Surveillance
9 Court, which shall have jurisdiction to review
10 such a petition.

11 “(B) ASSIGNMENT.—The presiding judge
12 of the Court shall assign the petition filed
13 under subparagraph (A) to 1 of the judges of
14 the Court serving in the pool established by sec-
15 tion 103(e)(1) not later than 24 hours after the
16 filing of the petition.

17 “(C) STANDARDS FOR REVIEW.—The For-
18 eign Intelligence Surveillance Court considering
19 a petition to modify or set aside a directive may
20 grant such petition only if the Court finds that
21 the directive does not meet the requirements of
22 this section, or is otherwise unlawful.

23 “(D) PROCEDURES FOR INITIAL RE-
24 VIEW.—The Foreign Intelligence Surveillance
25 Court shall conduct an initial review of a peti-

1 tion filed under subparagraph (A) not later
2 than 5 days after being assigned such petition.
3 If the Court determines that the petition does
4 not consist of claims, defenses, or other legal
5 contentions that are warranted by existing law
6 or by a nonfrivolous argument for extending,
7 modifying, or reversing existing law or for es-
8 tablishing new law, the Court shall immediately
9 deny the petition and affirm the directive or
10 any part of the directive that is the subject of
11 the petition and order the recipient to comply
12 with the directive or any part of it. Upon mak-
13 ing such a determination or promptly there-
14 after, the Court shall provide a written state-
15 ment for the record of the reasons for a deter-
16 mination under this subparagraph.

17 “(E) PROCEDURES FOR PLENARY RE-
18 VIEW.—If the Foreign Intelligence Surveillance
19 Court determines that a petition filed under
20 subparagraph (A) requires plenary review, the
21 Court shall affirm, modify, or set aside the di-
22 rective that is the subject of that petition not
23 later than 30 days after being assigned the pe-
24 tition. If the Court does not set aside the direc-
25 tive, the Court shall immediately affirm the di-

1 rective or order that the directive be modified,
2 and order the recipient to comply with the di-
3 rective in its entirety or as modified. The Court
4 shall provide a written statement for the record
5 of the reasons for a determination under this
6 subparagraph.

7 “(F) CONTINUED EFFECT.—Any directive
8 not explicitly modified or set aside under this
9 paragraph shall remain in full effect.

10 “(G) CONTEMPT OF COURT.—Failure to
11 obey an order of the Court issued under this
12 paragraph may be punished by the Court as
13 contempt of court.

14 “(5) ENFORCEMENT OF DIRECTIVES.—

15 “(A) ORDER TO COMPEL.—If an electronic
16 communication service provider fails to comply
17 with a directive issued pursuant to paragraph
18 (1), the Attorney General may file a petition for
19 an order to compel the electronic communica-
20 tion service provider to comply with the direc-
21 tive with the Foreign Intelligence Surveillance
22 Court, which shall have jurisdiction to review
23 such a petition.

24 “(B) ASSIGNMENT.—The presiding judge
25 of the Court shall assign a petition filed under

1 subparagraph (A) to 1 of the judges serving in
2 the pool established by section 103(e)(1) not
3 later than 24 hours after the filing of the peti-
4 tion.

5 “(C) PROCEDURES FOR REVIEW.—The
6 Foreign Intelligence Surveillance Court consid-
7 ering a petition filed under subparagraph (A)
8 shall issue an order requiring the electronic
9 communication service provider to comply with
10 the directive or any part of it, as issued or as
11 modified, not later than 30 days after being as-
12 signed the petition if the Court finds that the
13 directive meets the requirements of this section,
14 and is otherwise lawful. The Court shall provide
15 a written statement for the record of the rea-
16 sons for a determination under this paragraph.

17 “(D) CONTEMPT OF COURT.—Failure to
18 obey an order of the Court issued under this
19 paragraph may be punished by the Court as
20 contempt of court.

21 “(E) PROCESS.—Any process under this
22 paragraph may be served in any judicial district
23 in which the electronic communication service
24 provider may be found.

25 “(6) APPEAL.—

1 “(A) APPEAL TO THE COURT OF RE-
2 VIEW.—The Government or an electronic com-
3 munication service provider receiving a directive
4 issued pursuant to paragraph (1) may file a pe-
5 tition with the Foreign Intelligence Surveillance
6 Court of Review for review of a decision issued
7 pursuant to paragraph (4) or (5). The Court of
8 Review shall have jurisdiction to consider such
9 a petition and shall provide a written statement
10 for the record of the reasons for a decision
11 under this paragraph.

12 “(B) CERTIORARI TO THE SUPREME
13 COURT.—The Government or an electronic com-
14 munication service provider receiving a directive
15 issued pursuant to paragraph (1) may file a pe-
16 tition for a writ of certiorari for review of the
17 decision of the Court of Review issued under
18 subparagraph (A). The record for such review
19 shall be transmitted under seal to the Supreme
20 Court of the United States, which shall have ju-
21 risdiction to review such decision.

22 “(i) JUDICIAL REVIEW OF CERTIFICATIONS AND
23 PROCEDURES.—

24 “(1) IN GENERAL.—

1 “(A) REVIEW BY THE FOREIGN INTEL-
2 LIGENCE SURVEILLANCE COURT.—The Foreign
3 Intelligence Surveillance Court shall have juris-
4 diction to review any certification submitted in
5 accordance with subsection (g) and the tar-
6 geting and minimization procedures submitted
7 in accordance with subsections (d) and (e), and
8 any amendments to such certification or proce-
9 dures.

10 “(B) TIME PERIOD FOR REVIEW.—The
11 Court shall review the certification submitted in
12 accordance with subsection (g) and the tar-
13 geting and minimization procedures submitted
14 in accordance with subsections (d) and (e) and
15 approve or deny an order under this subsection
16 not later than 30 days after the date on which
17 a certification is submitted.

18 “(C) AMENDMENTS.—The Attorney Gen-
19 eral and the Director of National Intelligence
20 may amend a certification submitted in accord-
21 ance with subsection (g) or the targeting and
22 minimization procedures submitted in accord-
23 ance with subsections (d) and (e) as necessary
24 after such certification or procedures have been
25 submitted for review to the Foreign Intelligence

1 Surveillance Court. If an amendment is sub-
2 mitted subsequent to the issuance of an order
3 under subsection (i)(3) that significantly modi-
4 fies such certification or procedures, the Attor-
5 ney General and Director of National Intel-
6 ligence shall seek approval of such amendment
7 by the Court.

8 “(2) REVIEW.—Court shall review the fol-
9 lowing:

10 “(A) CERTIFICATION.—A certification sub-
11 mitted in accordance with subsection (g) to de-
12 termine whether the certification contains all
13 the required elements.

14 “(B) TARGETING PROCEDURES.—The tar-
15 geting procedures submitted in accordance with
16 subsection (d) to assess whether the procedures
17 are reasonably designed to ensure that the ac-
18 quisition authorized under subsection (a) is lim-
19 ited to the targeting of persons reasonably be-
20 lieved to be located outside the United States
21 and does not result in the intentional acquisi-
22 tion of any communication as to which the
23 sender and all intended recipients are known at
24 the time of the acquisition to be located in the
25 United States.

1 “(C) MINIMIZATION PROCEDURES.—The
2 minimization procedures submitted in accord-
3 ance with subsection (e) to assess whether such
4 procedures meet the definition of minimization
5 procedures under section 101(h) or section
6 301(4), as appropriate.

7 “(3) ORDERS.—

8 “(A) APPROVAL.—If the Court finds that
9 a certification submitted in accordance with
10 subsection (g) contains all of the required ele-
11 ments and that the targeting and minimization
12 procedures submitted in accordance with sub-
13 sections (d) and (e) are consistent with the re-
14 quirements of those subsections and with the
15 fourth amendment to the Constitution of the
16 United States, the Court shall enter an order
17 approving the certification and the use of the
18 procedures for the acquisition.

19 “(B) CORRECTION OF DEFICIENCIES.—If
20 the Court finds that a certification required
21 submitted in accordance with subsection (g)
22 does not contain all of the required elements, or
23 that the procedures submitted in accordance
24 with subsections (d) and (e) are not consistent
25 with the requirements of those subsections or

1 the fourth amendment to the Constitution of
2 the United States, the Court shall issue an
3 order directing the Government to, at the Gov-
4 ernment's election and to the extent required by
5 the Court's order—

6 “(i) correct any deficiency identified
7 by the Court not later than 30 days after
8 the date the Court issues the order; or

9 “(ii) cease, or not begin, the acqui-
10 sition authorized under subsection (a).

11 “(C) REQUIREMENT FOR WRITTEN STATE-
12 MENT.—In support of its orders under this sub-
13 section, the Court shall provide, simultaneously
14 with the orders, for the record a written state-
15 ment of its reasons.

16 “(4) APPEAL.—

17 “(A) APPEAL TO THE COURT OF RE-
18 VIEW.—The Government may appeal any order
19 under this section to the Foreign Intelligence
20 Surveillance Court of Review, which shall have
21 jurisdiction to review such order. For any deci-
22 sion affirming, reversing, or modifying an order
23 of the Foreign Intelligence Surveillance Court,
24 the Court of Review shall provide for the record
25 a written statement of its reasons.

1 “(B) CONTINUATION OF ACQUISITION
2 PENDING REHEARING OR APPEAL.—Any acqui-
3 sition affected by an order under paragraph
4 (3)(B) may continue—

5 “(i) during the pendency of any re-
6 hearing of the order by the Court en banc;
7 and

8 “(ii) if the Government appeals an
9 order under this section, subject to the
10 entry of an order under subparagraph (C).

11 “(C) IMPLEMENTATION PENDING AP-
12 PEAL.—Not later than 60 days after the filing
13 of an appeal of an order issued under para-
14 graph (3)(B) directing the correction of a defi-
15 ciency, the Court of Review shall determine,
16 and enter a corresponding order regarding,
17 whether all or any part of the correction order,
18 as issued or modified, shall be implemented
19 during the pendency of the appeal.

20 “(D) CERTIORARI TO THE SUPREME
21 COURT.—The Government may file a petition
22 for a writ of certiorari for review of a decision
23 of the Court of Review issued under subpara-
24 graph (A). The record for such review shall be
25 transmitted under seal to the Supreme Court of

1 the United States, which shall have jurisdiction
2 to review such decision.

3 “(5) SCHEDULE.—

4 “(A) REPLACEMENT OF AUTHORIZATIONS
5 IN EFFECT.—When replacing an authorization
6 issued pursuant to section 105B of the Foreign
7 Intelligence Surveillance Act of 1978, as added
8 by section 2 of the Protect America Act of 2007
9 (Public Law 110-55) with an authorization
10 under this section, the Attorney General and
11 the Director of National Intelligence shall, to
12 the extent practicable, submit to the Court the
13 certification prepared in accordance with sub-
14 section (g) and the procedures adopted in ac-
15 cordance with subsections (d) and (e) at least
16 30 days before the expiration of such authoriza-
17 tion.

18 “(B) REAUTHORIZATION OF AUTHORIZA-
19 TIONS IN EFFECT.—When replacing an author-
20 ization issued pursuant to this section, the At-
21 torney General and the Director of National In-
22 telligence shall, to the extent practicable, sub-
23 mit to the Court the certification prepared in
24 accordance with section (g) and the procedures
25 adopted in accordance with subsections (d) and